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PCT LEGAL ADMINISTRATION

In re Application of	:	
Masterson et al.	:	
Application No.: 10/591,806	:	DECISION
PCT No.: PCT/US2005/007936	:	
Int. Filing Date: 08 March 2005	:	ON
Earliest Priority Date: 08 March 2004	:	
Attorney Docket No.: 34149-712.831	:	PETITION
For: Apparatus For Electrically Mediated	:	
Delivery Of Therapeutic Agents	:	

This is in response to the renewed petition to revive under 37 CFR 1.137(b) filed on 30 November 2009.

DISCUSSION

In a Decision mailed on 30 September 2009, the renewed petition under 37 CFR 1.137(b) filed on 06 August 2009 was dismissed, without prejudice, because

petitioner has filed a copy of the declaration filed on 03 June 2009, as well as a new declaration. Inspection of the new declaration reveals that it nominates (and is signed by) Steven Masterson only. 37 CFR 1.67(a)(2) provides that "Deficiencies or inaccuracies relating to fewer than all of the inventor(s) or applicant(s) (§§ 1.42, 1.43 or § 1.47) may be corrected with a supplemental oath or declaration *identifying the entire inventive entity* but signed only by the inventor(s) or applicant(s) to whom the error or deficiency relates." See MPEP 603. Since the new declaration does not name the entire inventive entity, it would not be appropriate to accept it at this time. Therefore, requirement (1) has not been satisfied.

In response, petitioner has provided a copy of the declaration signed by Mr. Masterson on "8/4/09" which now nominates the entire inventive entity. Petitioner characterizes the submitted documents as a "revised declaration by Mr. Masterson identifying the entire inventive entity on sequential pages, along with a copy of the previously-submitted declaration bearing the un-initialed change to Mr. Masterson's mailing address and the declarations of the other two inventors Mr. Bernard and Mr. Hannaman..." Particularly in view of this description, the declaration accompanying the petition appears to be a copy of an earlier-submitted declaration which has been "revised" by affixing thereto a sheet nominating the other two inventors.

MPEP 602.01 states (in part) that

The wording of an oath or declaration cannot be amended, altered or changed in any manner after it has been signed. If the wording is not correct or if all of the required affirmations have not been made, or if it has not been properly subscribed to, a new oath or declaration must be required.

MPEP 605.04(a) explains (in part) that

each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. >Where individual declarations are executed, they

must be submitted as individual declarations rather than combined into one declaration (by combining the signature pages).<

while MPEP 201.03 states (in part) that

each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. For example, where the inventive entity is A and B, a declaration may not be executed only by A naming only A as the inventor and a different declaration may not be executed only by B naming only B as the inventor, which two declarations are then combined into one declaration with a first page of boiler plate, a second page with A's signature, and a second page with B's signature (so that it appears that the declaration was executed with the entire inventive entity appearing in the declaration when it did not).

The declaration at issue appears to have been amended after it was signed, by attaching an additional page naming the inventors who were not nominated in the declaration at the time it was signed. In view of the policy considerations reflected by the above MPEP excerpts, it would not be appropriate to accept the "revised declaration" as submitted. It is recommended that applicants prepare and obtain Mr. Masterson's signature of a new declaration document naming the entire inventive entity and including all of the required statements. For the above reasons, the "required reply" is not regarded as having been filed.

DECISION

The petition is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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